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In re Application of : DECISION ON  
Joseph Paternoster :  
Application No.: 10/511,421 :  
PCT No.: PCT/US02/34628 : PETITION UNDER  
Int. Filing Date: 28 October 2002 :  
Priority Date: 26 October 2001 :  
Attorney's Docket No.: 298.41 :  
For: USE OF THERMOREGULATORY MATERIAL : 37 CFR 1.137(b)  
TO IMPROVE EXERCISE PERFORMANCE :  
:

This decision is in response to applicants' "Petition For Revival Of An International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)," filed on 14 October 2004.

**BACKGROUND**

On 28 October 2002, this international application was filed, claiming an earliest priority date of 28 October 2001.

The deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 28 April 2004.

On 14 October 2004, applicants filed the instant petition under 37 CFR 1.137(b) and Transmittal letter for entry into the national stage in the United States, which was accompanied by, basic national fee, and an executed declaration.

**DISCUSSION**

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

**DECISION**

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing. The 35 USC 371(c)(1), (c)(2), and (c)(4) date of this application is **14 October 2004**.



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